

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,

vs.

Carlos Vega,

Defendant.

Criminal No. 3:08-590-CMC

OPINION AND ORDER

This case comes before the court on Defendant's *pro se* letter, construed as a Motion to Reduce Sentence Pursuant to the First Step Act of 2018. ECF No. 1857. Defendant inquired as to whether his sentence would be affected by the First Step Act. For the reasons explained below, Defendant's motion is denied.

Defendant pled guilty to Counts 1 and 43 of the Second Superseding Indictment, specifically, conspiracy to distribute 5 kilograms or more of cocaine and distribution of a quantity of marijuana. ECF No. 495. At the Rule 11 hearing, Defendant admitted he was involved with at least five kilograms of cocaine, as charged in Count 1, and distribution of marijuana, as charged in Count 43. ECF No. 797 at 128. Although Count 1 of the Second Superseding Indictment charged conspiracy with intent to distribute cocaine and cocaine base, it is apparent from Defendant's plea agreement and plea colloquy he admitted guilt on Count 1 only as to powder cocaine.

The Fair Sentencing Act was passed to reduce the disparity in the treatment of cocaine base and powder cocaine offenses by increasing the quantities of cocaine base required to trigger 21 U.S.C. §§ 841(b)(1)(A) and (B). *See* Pub. L. No. 111-220, 124 Stat. 2372 (emphasis added). Defendant admitted conduct regarding cocaine and marijuana, but not cocaine base. The court

accepted his plea to Count 1 based only on his personal involvement in five kilograms or more of cocaine.

Defendant also appears to inquire as to whether the effect of his § 851 enhancement has changed under the First Step Act. While there were some changes regarding § 851 enhancements, these changes were not deemed retroactive and therefore are available only to defendants who have not yet been sentenced.

Accordingly, Defendant's motion for relief under the First Step Act (ECF No. 1857) is denied.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
September 17, 2019